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DISTRICT COURT

CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; and WP Company LLC
d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES; AND THEIR ATTORNEYS OF RECORD:

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PLEASE TAKE NOTICE that an Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus was entered on the 2nd day of March, 2018, a copy of which is attached hereto.

Dated this 2nd day of March, 2018.

MARQUIS AURBACH COFFING

By: /s/ Jackie V. Nichols
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of March, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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Journal

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



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York Times Company; and WP Company LLC
d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

**ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS
PURSUANT TO NEV. REV. STAT. § 239.011/PETITION FOR WRIT OF MANDAMUS**

This matter came before the Court on Petitioners American Broadcasting Companies, Inc. ("ABC"), the Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC ("Los Angeles Times"), The New York Times Company ("The New York Times"), Scripps Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The Washington Post's ("Washington Post") (collectively the "Coalition") Amended Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.011/ Petition for Writ of Mandamus; and Petitioner Las Vegas Review-Journal's ("Review-Journal", and collectively with the Coalition,

1 “Petitioners”) Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.011/
2 Petition for Writ of Mandamus (collectively, the “Petitions”).

3 The Review-Journal filed its Opening Brief in Support of Amended Public Records Act
4 Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on December
5 8, 2017. The Coalition filed its Substantive Joinder thereto on December 15, 2017. Metro filed
6 its Opposition to Petitioner Las Vegas Review Journal’s Public Records Act Application
7 Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on January 8, 2018. Metro
8 filed its Opposition to the Coalition’s Petition on January 16, 2018. The Review-Journal filed its
9 Reply on January 22, 2018. Finally, the Coalition filed its Reply on January 31, 2018.

10 At the February 7, 2018 hearing on the Petitions, Joel E. Tasca, Esq., of the law firm
11 Ballard Spahr LLP appeared on behalf of the Coalition; Maggie McLetchie, Esq., of the law firm
12 McLetchie Shell LLC, appeared on behalf of the Review-Journal; and Nick D. Crosby, Esq. and
13 Jacqueline Nichols, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of the
14 Las Vegas Metropolitan Police Department (“Metro”). Based on the Court’s careful review of
15 the parties’ briefs, oral argument by counsel and the pleadings and papers on file, for the reasons
16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as
17 follows:

- 18 1. The Nevada Public Records Act (the “Act”) is codified at Nev. Rev. Stat. § 239.
- 19 2. The Act provides that public records must be made available to the public for
20 inspection or copying.
- 21 3. The purpose of the Act is to foster democratic principles by providing members of
22 the public with access to inspect and copy public records to the extent permitted under Nevada
23 law.
- 24 4. The Act, as well as the First Amendment to the Constitution, provides the press
25 with the ability to obtain and publish information about issues that affect the public interest and
26 information about the conduct of government officials. They further provide the press with the
27 tools to ensure that the government is responsible and efficient.
- 28

1 5. Furthermore, they provide the press with the tools that assist the public in holding
2 its government accountable.

3 6. Government records are presumed to be public records. Any restriction to the
4 public's right of access to public records must be narrowly applied.

5 7. Metro bears a heavy burden in preventing disclosure of public records pursuant to
6 the Act.

7 8. Metro must satisfy a two-pronged test to justify non-disclosure. Metro must first
8 establish, by a preponderance of the evidence, that the public records sought are confidential.
9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure
10 outweighs the public's interest in access.

11 9. The Act establishes a presumption in favor of public access.

12 10. The Court recognizes that governmental entities are generally required to provide
13 citations to legal authority supporting non-disclosure within five (5) business days pursuant to
14 Nev. Rev. Stat. § 239.0107(d). However, as to the Petitioners' argument that Metro waived the
15 right to withhold public records in this case by failing to timely respond, the Court rejects this
16 argument.

17 11. The Court finds that there was no implied, express, or statutory waiver due to
18 Metro's pre-petition conduct, particularly with respect to the extraordinary circumstances
19 surrounding the October 1 Massacre.

20 12. The Court finds that Metro had a duty to redact confidential information and
21 produce the non-confidential portions of the public records, if it contended that the requested
22 public records were confidential or otherwise protected from disclosure. Wholesale withholding
23 of public records with the general claim of confidentiality suggests to this Court that the records
24 have not been sufficiently scrutinized.

25 13. The Court finds that asserting a blanket protection over all categories of public
26 records is improper.

27 14. Metro had a duty to prove, by a preponderance of the evidence, that each public
28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

1 15. The Court finds that there exists no rule that records can be withheld merely
2 because they relate to an ongoing investigation. Metro still has the duty to show that the public
3 records of the ongoing investigation are confidential.

4 16. In light of Metro's preliminary report concerning the October 1 Massacre, the
5 entire universe of investigative records cannot be so sensitive as to warrant wholesale
6 withholding.

7 17. Additionally, Sheriff Lombardo publicly stated that it is Metro's responsibility to
8 ensure timely disclosure of public records in this case.

9 18. Metro, however, failed to specifically explain how the public record production
10 would impede the investigation.

11 19. To the extent that the disclosure might have some detrimental impact on the
12 investigation, that impact is outweighed by the public interest. The public has the right to know
13 the manner in which its government officials are carrying out their public safety responsibilities.

14 20. The Court finds that any personal privacy concerns implicated by the public
15 records disclosure can be remedied by redactions, including individual names (other than
16 government officials), addresses, phone numbers, social security numbers, descriptions of
17 individuals, and social media data for all individuals.

18 21. The Court also rejects Metro's contention – that the horrifying 911 calls may be
19 traumatic to close family members who hear the voices of their loved ones – as too speculative to
20 weigh against disclosure.

21 22. In the rare and limited circumstances that any such concern may arise, Metro may
22 prepare a privilege log for future review and consideration by this Court.

23 23. The Court denies Metro's request for an in camera review. The Court finds that
24 the time has passed for Metro to assert any valid objection to production.

25 24. The Court finds that Metro has engaged in wholesale withholding of public
26 records with insufficiently specific reasons to do so.

27 25. The Court concludes that Metro failed to prove by a preponderance of the
28 evidence that any of the requested public records are confidential.

1 26. The Court further concludes that the strong public interest in favor of disclosure,
2 together with the strong presumption in favor of production, outweighs any governmental
3 interest in withholding the public records.

4 27. The Court finds that the public records sought include: 911 calls, body camera
5 data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports,
6 search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and
7 information on any weapons obtained during the investigation into the October 1 Massacre.

8 Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

9 IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

10 IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing
11 public records responsive to the public records request at issue in the Petitions;

12 IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a
13 rolling basis, as public records are appropriately redacted and available for disclosure, without
14 unnecessary delay;

15 IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith
16 in producing the public records on a timely basis;

17 IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public
18 record that may be highly confidential or where redactions may not be practicable, Metro shall
19 meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this
20 right to potentially seek a protective order is to be used very sparingly;

21 IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not
22 to be used to withhold entire groups of public records;

23 IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a
24 protective order shall not cause any delay in the production of all other requested public records;

25 IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in
26 30 days to review a report, to be given by the Parties, covering what has and has not been
27 produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00
28 a.m.;

1 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall
2 have an opportunity to explain whether there has been good faith communication regarding the
3 production;

4 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall
5 hear any objections with respect to the delay in disclosure or the need for more time for Metro to
6 produce;

7 IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include
8 individual names (other than government officials), addresses, phone numbers, social security
9 numbers, descriptions of individuals, and social media data for all individuals. To the extent that
10 any public record produced might specifically identify the names of the individuals or the
11 description of the individuals (or any other personal information), that information shall be
12 redacted; and

13 IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records
14 subject to this proceeding available at Metro's office for review by Petitioners, particularly
15 where production of those public records is either too burdensome or impossible otherwise.

16 IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment
17 obligation and Petitioners shall pay the fees associated with the production of the public records
18 in accordance with NRS Chapter 239.

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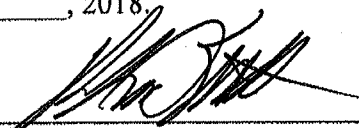
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1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental
2 briefing regarding the fee amount to be charged with respect to the production of the public
3 records.

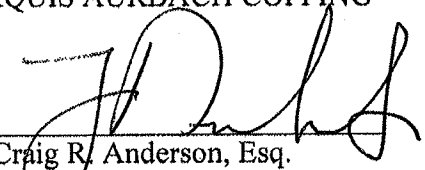
4 IT IS SO ORDERED.

5 DATED this 27th day of February, 2018.

6
7 
DISTRICT COURT JUDGE

8 Respectfully Submitted By: 

9
10 MARQUIS AURBACH COFFING

11
12 By: 

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